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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ROBERT THOMSON,)	CASE NO. 2:11-cv-06154-SJO-JC
)	
Plaintiff,)	SECOND AMENDED COMPLAINT FOR:
)	
vs.)	1. SECOND AMENDMENT
)	VIOLATION- 42 U.S.C. § 1983
TORRANCE POLICE DEPARTMENT and)	
THE LOS ANGELES COUNTY SHERIFFS)	JURY TRIAL DEMANDED
DEPARTMENT,)	
)	ATTORNEY FEES REQUESTED 42 U.S.C.
Defendants.)	§ 1988
)	

COMES NOW Plaintiff, Robert Thomson, pursuant to 42 U.S.C. § 1983 who alleges violation of his Second Amendment Rights by Defendants. Plaintiff is precluded from carrying a concealed firearm by the laws of the State of California unless he is granted permission to do so. As a resident of Los Angeles County and the City of Torrance, Plaintiff was required to apply for permission to exercise his Second Amendment Rights to Carry a concealed firearm, first from the Torrance Police Department and then from the Los Angeles County Sheriffs Department. Both Defendants denied Plaintiff permission, leaving him with no ability to exercise his Second Amendment Rights. Further, Plaintiff alleges that Defendants utilize a “Good Cause” policy implemented to overly restrict the exercise of Second Amendment rights without any reasonable basis for doing so. Plaintiff also seeks recovery pursuant to 42 U.S.C. § 1988.

FACTUAL BACKGROUND

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2 1. Plaintiff is a resident of Los Angeles County and the City of Torrance who has applied for
3 and been denied a license to Carry a Concealed weapon from the Torrance Police Department and
4 the Los Angeles county Sheriffs' Department in the past six months.

5 2. Plaintiff may only carry a concealed weapon with a permit to do so absent being in the
6 course of an arrest, or waiting for Police to arrive after summoning them.

7 3. Plaintiff is employed as a licensed California Bail Agent. While in the process of his Bail
8 Agent duties Plaintiff sometimes has in his possession over \$10,000 in cash, late at night in high
9 crime areas. .

10 4. As a licensed Bail Agent, Plaintiff has passed multiple criminal background checks, and, as
11 required by his license (P.C.1299), completed a course on powers of arrest approved by the Bureau
12 of Security and Investigative Services.

13 5. Plaintiff has also taken and was licensed by the State of California to Carry an exposed
14 firearm having completed the security guard exposed firearm training to receive an exposed firearm
15 permit from the BSIS.

16 6. The State of California has declared that Plaintiff is of good moral character and has
17 sufficient training to possess a loaded firearm outside of the home.

18 7. The California Legislature has passed Assembly Bill AB 144 which, unless vetoed, will go
19 into effect January 1, 2012 and will make it a crime to openly carry an unloaded firearm in Los
20 Angeles.

21 8. Plaintiff lives within 1,000 feet of a school and under California law, the only way Plaintiff
22 can leave his home with a handgun is to secure it in a locked container absent a permit to carry
23 concealed.

THE PARTIES

24
25 9. Plaintiff is a natural person and citizen of the United States who resides in the County of Los
26 Angeles and in the City of Torrance.

27 10. The Torrance Police Department is a municipal entity organized under the laws of the State
28 of California.

1 11. The Los Angeles Sheriffs Department is a municipal entity organized under the laws of the
2 State of California.

3 JURISDICTION & VENUE

4 12. This Court has subject matter jurisdiction over this action pursuant to 42 U.S.C. § 1983.

5 13. Venue lies in this Court pursuant to 28 U.S.C. § 1391.

6 LEGAL BACKGROUND

7 14. California Penal Code § 12050 is the only mechanism in California by which a non-law
8 enforcement official can carry a loaded firearm.

9 15. Defendants policies are an unconstitutional prior restraint on a fundamental personal liberty.

10 16. The Bill of Rights is the collective name for the first ten amendments to the United States
11 Constitution, which limit the power of the U.S. federal government. These limitations serve to
12 protect the natural rights of liberty and property including freedoms of religion, speech, a free press,
13 free assembly, and free association, as well as the right to keep and bear arms.

14 17. The Second Amendment States: A well regulated militia being necessary to the security of a
15 free State, the right of the People to keep and bear arms shall not be infringed.

16 18. The US Supreme Court Says:

17 “Putting all of these textual elements together, we find that they guarantee the
18 individual right to possess and carry weapons in case of confrontation.” *District of
Columbia v. Heller*, 128 S. Ct. 2783, at 2798 (2008).

19 19. The Supreme Court has explained that the natural meaning of “bear arms” is to “wear, bear,
20 or carry ...upon the person or in a pocket, for the purpose ... of being armed and ready for offensive
21 or defensive action in a case of conflict with another person.” *Id.* at 2793 (quoting *Muscarello v.*
22 *United States*, 524 U.S. 125, 143 (1998)).

23 20. The Ninth Circuit recently found, in a prior restraint case decided on a First Amendment
24 claim that:

25 Our analysis is guided by certain well-established principles of First Amendment
26 law. In public places such as streets and sidewalks, “the State [may] enforce a
27 content-based exclusion” on speech if the “regulation is necessary to serve a
28 compelling state interest and that it is narrowly drawn to achieve that end.” *Perry
Educ. Ass’n v. Perry Local Educators’ Ass’n*, 460 U.S. 37, 45 (1983). For content-
neutral regulations, the State may limit “the time, place, and manner of expression”
if the regulations are “narrowly tailored to serve a significant government interest,
and leave open ample alternative channels of communication.” *Id.*

1 We conclude that the Ordinance fails to satisfy the narrow tailoring element of the
 2 Supreme Court's "time, place, and manner" test. The Ordinance is not narrowly
 3 tailored because it regulates significantly more speech than is necessary to achieve
 4 the City's purpose of improving traffic safety and traffic flow at two major Redondo
 5 Beach intersections, and the City could have achieved these goals through less
 6 restrictive measures, such as the enforcement of existing traffic laws and regulations.
 7 Because the Ordinance does not constitute a reasonable regulation of the time, place,
 8 or manner of speaking, it is facially unconstitutional.
 9 *Comite de Jornaleros de Redondo Beach v. City of Redondo Beach* (9th Cir., Sept.
 10 16, 2011, 06-55750) 2011 WL 4336667.

11 21. Alternatively, the regulation fails because, it substantially burdens the right to keep and bear
 12 arms and is therefore subject to heightened scrutiny under the Second Amendment. *Nordyke v. King*
 13 (9th Cir. 2011) 644 F.3d 776, 786.

14 22. Torrance Police Department's Good Cause Policy states: The Police Department
 15 shall conduct an individualized assessment of each applicant for a CCW license, including a review
 16 of the standardized DOJ application, a background check, and an interview of the applicant. The
 17 Chief of Police shall issue a CCW license when, in his sole discretion, he determines there is good
 18 cause to do so and the applicant has met all of the other conditions set forth in California Penal
 19 Code section 12050. To establish good cause, an applicant must demonstrate more than a
 20 "generalized fear" for one's personal safety. Rather, the applicant must document that:

- 21 (i) the applicant is dealing with circumstances that distinguish the applicant from other
- 22 members of the public, in that there is a clear, present, and documented danger to the
- 23 applicant, and
- 24 (ii) there are no feasible alternative means of protection, either through existing law
- 25 enforcement resources or under the provisions of California Penal Code section 12031,
- 26 which carve out a number of exceptions that allow individuals to possess and carry firearms
- 27 in public settings for self-defense and defense of property.

28 23. Torrance Police Department Defines Good Cause as requiring, an applicant to demonstrate
 that there is a clear, present, and documented danger to the applicant, and there are no feasible
 alternative means of protection.

24 24. Torrance Police Department provides the following example of Good Cause:

where the applicant is a business owner who typically is forced to carry large sums of cash
 or valuable items in public and has been the victim of violent crime and/or the subject of
 documented, credible threats of violence.

25. Defendant LASD defines good cause as:

“convincing evidence of a clear and present danger to life, or of great bodily harm to the applicant, his spouse, or dependent child, which cannot be adequately dealt with by existing law enforcement resources, and which danger cannot be reasonably avoided by alternative measures, and which danger would be significantly mitigated by the applicant's carrying of a concealed firearm.”

FIRST CAUSE OF ACTION

VIOLATION OF 42 U.S.C. § 1983

26. Defendants interpretation of Penal Code § 12050's requirements of (1) “good cause” beyond the interests of self-defense violates the Second and Fourteenth Amendments.

27. The United States Supreme Court has now made it clear that the Second Amendment guarantees the individual right to possess and carry weapons in case of confrontation.

28. Defendants Denial of Plaintiffs applications leaves him with no alternative means of exercising his Fundamental Constitutional Right to possess a Functional Firearm for the purposes of Self Defense.

PRAYER FOR RELIEF

29. For an order that Defendants issue Plaintiff a Concealed Weapons Permit because “self-defense” is constitutionally sufficient good cause.

30. For general damages according to proof.

31. Costs and Attorneys' fees pursuant to 42 U.S.C. § 1988.

32. For costs, fees and any such other relief the Court deems just and proper.

November 4, 2011

_____/s/_____

Jonathan W. Birdt